

**Testimony of Indiana Secretary of State Todd Rokita
for the Committee on House Administration
February 9, 2005**

Chairman Ney and members of the Committee on House Administration, I would like to thank you for inviting me to testify regarding Indiana's implementation of the Help America Vote Act of 2002 (HAVA), how it affected the 2004 General Election, and our plans for full implementation of HAVA. For those of us charged with constitutional and statutory duties to impartially promote and conduct elections, implementing HAVA is not a small task. HAVA has brought effective and much-needed election reform to our state, as it has for the rest of the country. We all face significant challenges presented by HAVA, and in Indiana I believe we are addressing those as effectively and efficiently as we can. Certainly full federal funding of HAVA is needed to help state and local election officials succeed in making HAVA work. I would appreciate your efforts in helping make full funding a reality.

HAVA implementation is progressing very well in Indiana. In 2003 our state plan was developed by a diverse group of 28 members I appointed from a variety of backgrounds – all three major political parties in the state, county and state election officials, the military, the media, the disability community, minority communities, and state legislators. Today only about 10% of our voters would vote on outdated voting equipment, and we expect to have that down to zero. That is, every registered voter will have the opportunity to vote on new equipment. Our statewide voter registration system is under development in a very inclusive process involving county election officials, state agencies, and other stakeholders. We carried out a robust outreach and education initiative for voters and poll workers in 2004. Before spending taxpayer money on polling places, we surveyed every polling place in the state to determine their condition for accessibility, and we are now working with and encouraging county officials in our 92 counties to address accessibility issues in polling places. I intend today to highlight some successes we have seen in Indiana as well as some challenges we have faced in the election reform arena due to HAVA.

Provisional Voting

In Indiana, we embraced the idea of provisional voting shortly after the 2000 election, when it was proposed by our Bipartisan Election Task Force on Election Integrity. So we were pleased when HAVA made provisional voting the law of the land.

I see provisional voting as a tremendous accessibility tool, knowing it can and should be used only as a *last resort* when a qualified voter would have otherwise been turned away from the polling place, her civic duty unfulfilled. Due to the strict and, frankly, sometimes unreasonable and ill-considered mandates of the National Voter Registration Act passed by Congress in 1993, keeping an accurate list of voters has become an even more daunting task, and clerical mistakes with the list can occur through no fault of the voter. In these cases, that voter's intentions should be honored and his ballot counted. Provisional voting offers us this chance, as election administrators, to get

it right, maintain voter confidence, and encourage voter turnout -- one of our most important goals.

At the same time, provisional voting can encourage system accountability. It can deter unscrupulous individuals, political parties, activist groups or campaigns from seeking to dilute the voice of honest voters by rushing polling places with unqualified voters and people intending to vote multiple times. In 2002, the *Wall Street Journal* focused attention on this illegal practice in Indiana by imbedding one of its columnists in a Congressional campaign where that columnist detailed, through his eyewitness account, voter intimidation in reverse -- that is, poll worker intimidation -- by groups of persons (being chauffeured from polling place to polling place in vehicles used by the campaign) demanding to vote and proceeding to cast ballots without regard to the law or the rights of other voters.

Each state's election system has its own strengths and its unique tools to provide for both voter access to the ballot and for election integrity. Therefore, HAVA correctly left the details for administration of provisional voting to the states. I would like to describe Indiana's process, which we believe fairly implements provisional voting in a way that protects voters' rights and fosters system accountability.

Indiana Code 3-11.7-5-2 sets forth the key requirement concerning precinct based provisional voting in Indiana. Each county election board ultimately decides whether a provisional ballot is valid, and therefore whether the provisional ballot should be counted. The county election board can be assisted by bipartisan teams in sorting provisional ballots and in helping make "easy" calls where the facts about a provisional ballot are not in dispute.

When the county election board examines a provisional ballot, which is still sealed inside its secrecy envelope to protect the privacy of the voter's choices, the board asks three questions:

(1) Is the affidavit signed by the provisional voter properly executed?

Did the voter sign a sworn statement that the voter meets the qualifications to be eligible to vote in the precinct?

(2) Is the provisional voter "a qualified voter of the precinct"?

Is the voter registered to vote in the precinct where the voter is casting the provisional ballot (or otherwise "qualified" to vote in that precinct under one of the fail-safe methods)? Does the person continue to meet the requirements for being a voter in the precinct (that is, for example, is the voter still alive)?

(3) If this voter claims to have applied to register to vote at a "full service" voter registration agency, did the voter apply at the agency while registration was still open?

Since "full service" voter registration agencies under the National Voter Registration Act will continue to accept voter registration applications year round, did this voter apply with the agency before registration was closed before the election? If a voter applies after the registration cutoff, that application is still processed, but is done so when registration reopens after the election.

The county election board has to find that the answer to each question (1), (2), and (3, if applicable) is yes. If the answer is yes to each question, the provisional ballot is declared valid, removed from the secrecy envelope, and processed.

Policy Considerations

One of the strongest arguments for having provisional ballots cast at the precinct where the voter lives comes from one of the most successful community efforts in modern times: the neighborhood watch programs. The neighbors who participate in these programs are the best equipped and have the best knowledge to sort out innocent behavior from suspicious activity. They know the difference between people simply walking along their street and an unfamiliar car circling the playground.

When many of these same community activists serve as poll workers, they may know that a person whose name does not appear on the poll list is their neighbor, or will know if a residence address given by a person is actually a demolished building. They can better communicate the questions they have to the county election officials to help eliminate the need for the voter to cast a provisional ballot in the first place. In Indiana, we firmly believe that the provisional voting process is one of last resort—to be used only when all other methods of proceeding directly to the voting booth have been exhausted. So far, we have seen its use limited to the rare exception and not used as “normal” way of voting. Based on reports of large numbers of provisional votes cast in various states, it seems to me that provisional voting is either not being used as a last resort or is being abused. I believe the way we address this in Indiana, by making sure all other avenues are exhausted before the casting of a provisional ballot, best serves the voters.

Everyone acknowledges the desperate need to recruit poll workers. We also know that both poll workers and voters are discouraged by long lines and delays at the polls. Discouraged poll workers may decline to work again. Discouraged voters may decide that the lines are too long and may walk away without voting. We need to recognize that while of course voting is important and the integrity of the election process is critical, it is also true that for many non-activist voters outside this room, casting a ballot is only one of several important or critical things that they must get done on Election Day. For example, a parent picking up a child after school, a worker hurrying to her job, or a minister on the way to visit a patient at a hospital also have other important things to do the rest of the day.

For that reason, we want to make every voter’s experience within the polls as pleasant and as efficient as possible. Some problems at the polls are of course unavoidable. Some voters have more ability (and perhaps more patience) than others to wait while the poll workers try to solve these problems.

But every voter who would appear at a polling place other than at the precinct where he lives to cast a provisional ballot there would be requiring another voter to wait. The voters in line would have to wait while the poll workers look unsuccessfully for the name on the poll list, while the poll workers process the forms the voter fills out to cast a provisional ballot, while the provisional voter uses a booth to cast her ballot, and while the poll workers provide the provisional voter with the information required by HAVA about the provisional ballot process.

Then, there are the logistical problems associated with the ‘vote anywhere’ approach. For example, administrators could not possibly know how many provisional ballots to print, and of what kind, for a particular polling place, which would lead to ballot shortages, and yet again, turning potential voters away—the very thing provisional voting was designed to stop!

Yes, every vote is important. But no voter is more important than any other voter. We should encourage both equal treatment and equal responsibility for all voters.

Prohibiting precinct-based provisional voting also sends the wrong message about the importance of voting for all of the other offices on the ballot. While important decisions are made in Washington and in state capitals, some of the decisions that have the most obvious and compelling effects on people’s daily lives are made down the street at city hall or in the county government building. The decisions about whether to rezone to allow for a new business, to change a speed limit in a neighborhood, or to raise school tax levies are often made by these local elected officials.

It is also true that elections to these local offices are sometimes decided by one or two votes, or even have ties. While some might think an actual tie vote is statistically too rare to consider, in one Indiana county in 2003 a nonpartisan election for school board resulted in a tie vote between a challenger and the incumbent.

How ironic it would have been if a voter in that county had chosen to stop by some other polling place on the way home from work to vote for the “more important” statewide offices, such as United States Senator or Governor, by way of a provisional ballot since it was more convenient to do so, only to discover the day after the election that she could have decided the school board election by her own vote if only she had appeared at the precinct where she lived. Our republic needs and deserves a system where elected offices are treated in a uniform fashion when it comes to the selection of the officeholder.

(NOTE: In Frankton-Lapel school corporation in Madison County, Indiana, the local judge broke the tie in favor of the incumbent).

As we have been shown in other instances, history is a stubborn teacher. If we fail to remember our lessons, she will teach them to us again and again.

We have been taught the lesson in the past that to protect the integrity of the election process, it is important as a general principal to have voters cast their votes in the precincts where they live. Let me take a moment to tell you about the lesson we were taught in Indiana.

There was once a close presidential election. The Democratic Party’s candidate won the popular vote that year but lost the Electoral College vote to the Republican Party nominee. There were allegations both before and after Election Day of fraud in a key state that both parties had fought hard to carry.

The year was not 2000; the year was 1888. The state was not Florida; the state was Indiana. The candidates were not Bush and Gore; they were Cleveland and Harrison.

In Indiana, there was evidence that so-called “floaters” were being hired to go from one precinct to another on Election Day to cast votes for the most important race on the ballot: President of the United States. In the absence of an effective voter registration system, these floaters may have provided the margin of victory in a presidential campaign. No one knows for sure.

And that is one risk inherent in a system other than one with precinct-based provisional balloting. Yes, if modern-day floaters appeared at several polling places on Election Day, the law requires that these voters be given provisional ballots, whose validity can be determined later.

We also know from our experience in 2000 that the public's patience in waiting for election results can quickly wear thin and that the credibility of both the media and the entire election administration process can be damaged by prolonged doubt about which candidate has won an election.

A flotilla of modern-day "floaters" could have that effect in a key state in a national race or in a statewide race for United States Senator or Governor. Even if an effort to improperly sway the election results through misuse of provisional voting fails, there will be time required to sort out genuine from false provisional ballots. Once again, the general public will wait while the ballot battles are fought before county election boards or in the courts.

Just like problems at the polling place, some election contests, disputes, and recounts are inevitable. There will always be ill-motivated persons who attempt to win an election by any means, fair or foul. However, let's not have to learn the lesson about "floaters" again.

The aftermath of the 1888 election in Indiana was much like that of 2000. There was a bipartisan effort, led by the Governor, a Democrat, and the Governor-elect, a Republican, to enact laws that according to one historian "made Indiana a pioneer in election reform." Other states followed Indiana's lead in providing for secret, government-printed ballots for all voters, and for those ballots to be given to each voter at the voter's respective polling place.

The same historian (Walsh, Centennial History of the General Assembly, p. 228-229) wrote, "the immediate result" of these reforms "was restoration of public confidence in the integrity of Indiana's election process."

I contend that implementing reforms in the spirit of HAVA can and is beginning to have the same effect in restoring public confidence in the election process. And provisional voting supports our goal as election administrators – making sure every eligible vote counts.

Voter Registration

A decade's worth of election experience since 1993 has given us a much better appreciation of the strengths and weaknesses of the National Voter Registration Act (NVRA). While NVRA fulfilled its intended goal of making it easier for eligible voters to register, its lack of flexibility has left us with a legacy of unintended consequences. Voters and potential voters are discouraged when they hear media reports that the percent of voters turning out to exercise their civic duty is declining. What they do not realize but we election officials know is that voter turnout is probably much higher than is reported because voter turnout statistics are based on the number of people listed in the voter rolls even though many are neither eligible to nor intend to vote in the places where they registered long ago. In Indiana, we estimate about 20% to 30% of our voter roll statewide consists of people who are no longer eligible to vote in the places where they

appear on the poll lists, either because they have moved and registered elsewhere or because they have died and election officials have not been able to remove them from the list.

Poll workers are discouraged and frustrated when they see the names of deceased or non-resident voters appear on the poll list year after year, despite their efforts (or those of the voters) to have the list corrected. Because poll workers often work at the same polling place year after year, they see these problems continuing with no real answer to the questions about when or how it can be fixed.

Election administrators are resigned to their task of performing the unhappy duty of explaining the good intentions of NVRA to a spouse who is grieved that the name of his deceased wife is still on the poll list, right above his own. Does this stop that widower from returning to the poll year after year? Maybe not, but this additional grief point is another unintended consequence of the NVRA.

These problems, resulting from the overly rigid federal statutes governing voter lists, call forth our instinct to help and our sympathy. But the criminal acts of those who take advantage of these phantoms who appear on the poll lists should make us outraged at this abuse of our election process. I point to the 2003 mayoral primary election in East Chicago in Lake County, Indiana as an example of what can and does happen. Because of rampant voter fraud, the Supreme Court of Indiana ordered a new special election for mayor of the city late last year. Media and eyewitness accounts revealed that several individuals voted from addresses where homes had been demolished years before for the construction of a new baseball stadium.

I served on a bi-partisan Election Integrity Subcommittee created by the Lake County Election Board in 2003 to address the many problems with elections in Lake County where we heard such testimony. We received documents, such as obituary notices, and sworn testimony of individuals indicating those voters listed in the obituary notices had indeed actually died, but poll lists indicated they had voted, or more correctly, someone had voted in their names in election after election after death. While these cases of fraud and election abuses in Lake County seem extreme and are by some regarded as the death throes of an old political machine, voter registration abuse can and likely does happen in other places around the country. It is a very real problem and one we can easily prevent by removing some of the rigid restrictions of NVRA.

From an administrative perspective, bloated voter rolls are costly for federal, state, and local governments. Election administrators must prepare precincts for elections based on the number of registered voters, knowing some of them could not possibly show up to vote. This leads to wasteful spending on ballots and other election day forms. For instance, Indiana law requires (for its optical scan and punch card counties) local election officials to have at each precinct enough ballots for every registered voter, regardless of what turnout statistics show. At the end of each election day, mountains of relatively expensive, specially printed paper must be discarded. Bloated rolls also lead to increased costs for candidates, parties, and interest groups that rely on state and local voter lists for their mailings.

Further, if we had a true accounting of the real number of eligible voters in each county, many counties could and would likely condense precincts. In addition to easing the very real problem of recruiting poll workers, having a true and accurate voter registration list would lower the costs associated with putting on elections, including

reducing the amount of taxpayer dollars spent on stipends for poll workers. Furthermore, local election officials could then reallocate voting equipment, placing additional machines in high traffic precincts and having back-up machines ready to go in case of election day problems. Counties could get a more accurate estimate of how many machines they really need and save scarce state and federal money.

HAVA's requirement for a single, uniform, official, centralized, interactive computerized statewide voter registration list is a step in the right direction. In Indiana, our statewide voter registration system project is well under way. After a very thorough procurement process, we selected a vendor last year to develop our system and have it in place by the end of 2005. In just a few weeks, we will be rolling out a pilot program in about 10% of our counties. The response from county election officials has been overwhelming – more than half of Indiana's 92 counties volunteered to be one of the system's pilot counties. We have included in our discussions, and on our statewide voter registration system steering committee, representatives from the other state agencies with whom we will work to obtain voter registration information, including the department of correction, department of health, and bureau of motor vehicles.

While creating this single voter registration list has presented its own challenges, like addressing the varying types of technology available in the counties, once it is in place it will revolutionize election administration in our state. It is important for us to keep in mind, though, that the data coming out of the system is only as good as the data going in. The fact is our voter lists, largely because of NVRA, are bloated. We plan to do what we can to clean up our statewide list during this process, but we do still have the constraints of NVRA to consider.

Voting Systems

In Indiana in 2000, over 50% of our state's voters were casting ballots on punch card or lever voting equipment. In the 2004 elections, only 10% of registered voters would have voted on those same machines. At the end of 2004, the one remaining lever county retired the last lever machines. Many counties have purchased machines accessible to disabled voters so they will have one in each polling place. I am confident all remaining punch card machines will be phased out and there will be a machine accessible for disabled voters in each polling place in Indiana by 2006. To date, and pursuant to our state plan, we have distributed \$17 million in voting equipment reimbursements to Indiana counties.

We all heard the sometimes sensationalized press accounts regarding direct record electronic (DRE) machines in the months leading up to the 2004 November election, particularly from the groups who called for a voter receipt or voter verified paper trail for all DRE machines. In Indiana we have been using DRE machines for the last twenty years in some counties. Like any device, DREs can have problems. But we have had very few, and all of these problems can be attributed to inevitable human error and not malice or criminal efforts to suppress or steal votes. During the Indiana Ninth Congressional District recount we recently conducted following the November 2004 election, three of the six counties we recounted before the recount petition was dismissed were DRE counties. In a very transparent process, parties, election officials, and

watchers had the opportunity to examine poll lists, internal paper audit trails from the DRE machines, and the machines themselves. And we again found the machines worked to reliably and effectively count votes. There were no significant changes in the number of votes cast for either candidate in any of the counties.

A great deal of information has been presented on both sides of the debate about voter verified paper trails for DRE machines, and this discussion will continue for years. Some of my colleagues have contemplated, and at least one already enacted, a statewide requirement for voter verified paper trails for DRE machines. I respect the right of my colleagues in those states to make their own decisions on this important issue.

In Indiana, having successfully used DRE machines for 20 years, we have not taken the position of requiring a voter verified paper trail. I urge this committee and the entire Congress to continue to allow these decisions about features on voting equipment to be left to state and local election officials who are closest to and know best the needs of their voters and the unique needs of the election process in their states. The administrative nightmare of adding new requirements on top of partially implemented HAVA requirements now, with less than eleven months before the HAVA implementation deadline and with voting equipment procurement contracts pending or already entered by most jurisdictions, is enormous.

We have also addressed in Indiana the issue of voting system vendor accountability. In 2004, state election officials discovered that a vendor had installed and allowed uncertified software to be used during the 2003 municipal elections in otherwise certified equipment. Our state election commission addressed concerns with using this software by requiring a hefty bond to be secured by the vendor for the 2004 November election. We also addressed this issue with legislation. In 2004, Indiana made it illegal to not only sell or install uncertified voting equipment, including software, but also to market uncertified equipment in the state. We did this to protect our county election officials from the old “bait and switch” routine, that is, being shown one model and sold another. In 2005, we are asking our legislature to pass law allowing my office to impose hefty civil penalties (after an administrative hearing) against any voting system vendor who knowingly or negligently allows voting equipment not allowed by state law to be used in an election or allows voting systems to be programmed or used in any manner contrary to state law.

Accessibility Standards

In Indiana, we partnered with the Governor’s Planning Council for People with Disabilities to conduct a statewide survey of all Indiana polling places on election days (about half during a May primary and half during a November general) in 2004 so we could give local officials detailed roadmaps as soon as possible for correcting accessibility problems in their polling places. We conducted these surveys on election days to be sure our results reflected actual conditions in locations when they are set up for an election.

Our surveys found that about 80% of polling places are mostly compliant with accessibility standards. We are now working to correct easy to fix problems by ordering parking signs and door handles in bulk through state purchasing avenues to send to

counties for their use in polling places. Further, we are beginning a project where we hope to work with service groups like the Boy Scouts, United Way, and other local groups dedicated to community service to make upgrades that require construction, like ramps and accessible parking lots. Our hope is that this will be a way to stretch the limited state and federal funds available to pay for such upgrades for all polling places as well as help foster a sense of community involvement and investment in our elections.

To give local election officials more flexibility in relocating polling places that cannot be made accessible, we have legislation pending before our legislature to enable local officials to move a polling place up to five miles outside a precinct's boundaries if such a move is necessary to make the polling place for the precinct fully accessible to voters with disabilities.

As part of our training and education efforts in 2004, we worked with Indiana Protection and Advocacy Services and the Governor's Planning Council for People with Disabilities to properly train poll workers how to work with disabled voters and to educate voters with disabilities about their rights at the polls.

All of us have our own physical limitations today, and we may expect to face other physical challenges in the course of our lives. Therefore, making voting accessible is important for all of us. We intend to have accessible voting for all eligible voters in every precinct in Indiana by 2006.

Vote Fraud

The most important issue facing election officials around the country, and something we all consider every day, is voter confidence. Increasing the number of eligible, properly registered voters who turn out to cast their ballots is our mission. And voter confidence in our system is crucial to that mission. It is incumbent upon us to address potential problems as soon as possible and not wait until we have a crisis to fix the system. One important way to increase voter confidence is to curb vote fraud. As we all know, reports of fraud and abuse receive much more public attention than good stories about smoothly run elections. So we must do all we can to stop vote fraud from happening.

In many places around Indiana, the documented and alleged vote fraud we see centers around abuses of absentee ballots, in addition to the problems with bloated voter registration lists detailed previously in this testimony.

Earlier in this testimony I referred to the vote fraud so massive in Lake County, Indiana that the Supreme Court of Indiana ordered a special mayoral primary and general election more than a year after those elections had originally taken place. The trial court judge in the case wrote an opinion over 100 pages long detailing instances of absentee ballot fraud. But vote fraud does not just happen in Lake County, Indiana.

In Anderson, Indiana, a mid-size city in the north central part of the state, a young man was convicted last year of vote fraud. He completed absentee ballot applications in the names of registered voters. Knowing the statutory turn-around time in which the election office would mail absentee ballots, he then literally followed the mail carrier and plucked the ballots out of the mailboxes. He completed those ballots and returned them to the election office. And he did it again in another election. He was later caught and

successfully prosecuted. Fraudulently cast votes like these deny those of us who cast honest ballots to have our votes counted as they should. These fraudulent votes dilute the vote of every honest voter who goes to the polls.

I truly believe Hoosiers are good, honest people. But these examples prove we have some bad apples. And if we have them in Indiana, you have them in your states. We must remember that every vote is important – every vote legally cast by an eligible voter. It is our duty to make sure those legally cast votes are not cancelled out by fraudulently cast ballots.

One reform our legislature is considering this year, and a reform I strongly support, is a requirement that each voter be asked to show photo identification when he appears to vote. A Rasmussen poll conducted last year showed over 80% of Americans believe we should be required to show photo identification to vote. It has been my experience that people expect to be asked for identification when they arrive at the polls. They approach the poll clerks' desk and immediately reach for a purse or wallet to get out a driver's license or other piece of identification. In today's society, we show identification for so many of our daily activities – to enter many buildings, to ride on an airplane, to write a check, to rent a movie. Voters expect to be asked for identification when they cast their ballots.

This is not about voter intimidation. It is about voter confidence. It is about the right of a legally registered voter to have her ballot counted and to expect that ballot to have exactly the same weight as every other legally registered voter's ballot. Inherent in this is the right not to have her vote diluted or cancelled out by someone who would act to defraud the system. Requiring government issued photo identification at the polls is a way to ensure this. State and local officials know this, and I look forward to working with my state's legislature to pass this important tool in providing a higher level of confidence for Hoosier voters.

I appreciate your invitation to allow me here today to share Indiana's experiences implementing HAVA. I look forward to continuing to work with you and with state and local election officials in my state and around the country as we approach HAVA's implementation deadlines.

Thank you.